AJN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.423 OF 1989

Manohar Vithal Benapure, aged 38,)
Occ, Service, r/o. Vasgade, Taluka)
Tasgaon, District Sangli.) ... Appellant

Versus

The State of Maharashtra.) ... Respondent

Ms. S.M. Dandekar for the appellant.

Ms. P.H. Kantharia, A.P.P. for the respondent.

CORAM: SMT. RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED: 16TH DECEMBER, 2004.

ORAL JUDGMENT:- (Per Smt. Ranjana Desai, J.)

1. The appellant (for convenience, "the accused") was tried in Sessions Case No.107 of 1988 in the Court of the IIIrd Additional Sessions Judge, Sangli for offence punishable under section 302 of the Indian Penal Code (for short, "the IPC").

2. At the trial, the case of the prosecution was that deceased Akkatai Tukaram Patil (for convenience, "the deceased") was residing at the farm house situated at land block No.313 at Khanderajuri alongwith her daughters Minakshi and Mangal. The accused was married to Minakshi in the year 1980. At that time, the accused was serving in the Military. Therefore, Minakshi was residing with him at the place of his service and, thereafter for some time, at Vasgade. The accused retired from the Military

service and started residing at the house of the deceased along with his wife Minakshi at Khanderajuri. He resided there for about two years and, thereafter, started ill-treating his wife Minakshi. The accused was addicted to liquor and, therefore, he used to quarrel with the residents of the village. Therefore, the relations between the deceased, Minakshi and the accused were strained. According to the prosecution, the deceased asked the accused to take away his articles and, therefore, the accused took away all his articles from the house of the deceased one month prior to the incident in question and, started residing at Vasgade. The brother of the accused had been to the house of the deceased for compromise but the deceased did not agree and, hence, no settlement could be arrived at.

3. It is the case of the prosecution that on 6/5/1988 at about 9.00 p.m., the deceased, Minakshi, Mangal and Laxmibai were sitting in the courtyard at the eastern side of the house. Mangal and Minakshi were sleepy and, hence, they went inside the house. Laxmibai and the deceased stayed in the courtyard. Droupada, a child aged about six years, who is the daughter of Leela, the elder daughter of the deceased was also in the house. At about 10.00 to 10.30 p.m., the accused came near the deceased. There was a talk between the accused, Laxmibai and the deceased. There was exchange of words. The accused was carrying an axe but, he had concealed it at his back. The accused assaulted the deceased by means of the axe

and, therefore, the deceased raised shouts "Oh Mother". Laxmibai also started shouting as "Minakshi Minakshi". After hearing the cries of the deceased, Minakshi and Mangal tried to open the eastern side door of their house. It was chained from outside hence, they came out of the house from the western side door. When they reached the spot, they noticed one person assaulting the deceased. They could not identify him at that time. However, noticing their presence, the said person turned and passed from their side. Hence, they identified him as the accused.

4. The prosecution story further goes on to say that after hearing the cries, Gajanan, Laxman and Popat came out of their respective houses. They saw one person running. Hence, they chased him and caught him and took him near the house of the deceased. He was taken to the Village Panchayat Office at Khanderajuri. Then Sarpanch Balasaheb Patil was informed about the incident by Annasaheb Gaikwad, who was sitting on the Katta of Village Panchayat. The accused was kept in the Village Panchayat Office. Then in the morning, PSI Dhumal came to the spot and took custody of the accused. The blood stained clothes of the accused were attached under the panchanama. The inquest was done. Panchanama of the scene of offence was drawn and the articles found at the scene of offence were attached. The complaint of Sarpanch Balasaheb Patil came to be registered (Ex-23). On completion of the investigation, the accused came to

be charged as aforesaid.

5. According to the accused, as he and Minakshi did not have a child, the deceased was insisting that he should marry her daughter Mangal. The land was transferred in his name by the deceased. The deceased had taken loan from the Land Development Bank, which was repaid by the accused. The brothers of the deceased were trying to grab the property of the deceased. They were insisting that Mangal should be married to Dagdu, the son of the deceased's brother Chavan. Therefore, there was misunderstanding between the deceased and the Chavan family. The Chavan family had prejudiced the mind of the deceased against the accused and, therefore, a false case came to be registered by the police patil. According to the accused, somebody else had murdered the deceased.

The accused claimed to be innocent.

6. In support of its case, the prosecution examined as many as 13 witnesses. PW-6 Laxmibai claims to be an eye-witness. The prosecution has also examined the daughters of the deceased viz. PW-4 Minakshi and PW-10 Mangal. PW-3 Balasaheb Patil, the Sarpanch, who has lodged the complaint was also examined. PW-11 Annasaheb Gaikwad, who had informed the Sarpanch about the incident was also examined. PW-7 Gajanan and PW-8 Laxman, who had caught the accused while he was running away, have also been examined. PW-5 Dr. Mulla has proved the post-mortem notes. Details of investigation have been

given by PW-12 PSI Dhumal and PW-13 SDPO Raskar. After perusing the evidence on record, the learned Sessions Judge convicted the accused under section 302 of the IPC and sentenced him to life imprisonment. Hence, the accused has preferred this appeal.

7. We have heard, at some length, Ms. Dandekar, the learned counsel appearing for the accused and Ms. Kantharia, the learned A.P.P. appearing for the State. With the assistance of the learned counsel, we have gone through the evidence and the record of the case.

8. Before we deal with the rival contentions, it is necessary to have a look at the post-mortem notes. PW-5 Dr. Mulla did the post-mortem on the corpse of the deceased on 7/5/1988. The post-mortem notes are at Ex-26. Dr. Mulla found the following external injuries on the body of the deceased.

"(1) Incised wound forehead midline 7.5 CM x 1.25 CM x Scalp deep.

(2) Incised wound face left side, starting from below the quarter canthus of left eye, upto nose 10 CM x 1.25 CM. Fracture mexilla left and fracture of nasal cartilage.

(3) Incised wound just below the mandible

right side starting from below the chin extending to the right side and ending 3 C.M. below right ear lobule. 12.5 CM x 5 CM x 7.5 CM deep, Pharynxe exposed.

(4) Incised wound neck right side 5 CM x 1.25 CM x 2.5 CM deep.

(5) Incised wound neck back side - 15 CM x. 7.5 CM x 3.75 CM (Muscle deep).

(6) Incised wound left forearm, dorsal aspect 7.5 CM x 1.25 CM x 2.5 CM. Fracture Ulna middle 1/3 region.

(7) Incised wound below and behind left ear 3.75 CM x 1.25 CM x 1.25 CM.

(8) Incised wound left shoulder region laterally 1.25 CM x 0.5 CM x 0.5 CM (Subcutanious deep).

(9) Incised wound left hand dorsum 2.5 CM x 2.5 CM x .5 CM.

(10) Incised wound over scalp right parietal region 10 CM x 2.5 CM x Scalp deep.

(11) Abrasion both knee 1 CM x 1 CM each.

(12) Abrasion left shoulder region 10 CM x 2.5 CM.

He found the following internal injuries on the body of the deceased.

"Contusion left parietal lobe, 2 CM x 1 CM x 1 CM area; parietal lobe of brain was the location of injury." Above injury corresponds to the external injury No.10 mentioned in column No.17."

According to PW-5 Dr. Mulla, the cause of death was due to haemorrhagic shock due to multiple wounds with contusion of screbrum. When axe (article 4) was shown to him, he stated that injuries 1 to 10 are possible by the said axe. He has further stated that all the injuries collectively were sufficient to cause death and the death was instantaneous.

9. PW-6 Laxmibai was chitchatting with the deceased in the courtyard on the day of the incident. She has stated that she, the deceased, PW-4 Minakshi, PW-10 Mangal and Draupada were sitting in the courtyard upto 9.30 p.m. PW-4 Minakshi, PW-10 Mangal and Draupada went inside the

house. She and the deceased remained in the courtyard. They were sleeping on the ground. The accused came there. She inquired with him as to why he had come late and whether he had not attended the duty. The accused replied that he had attended his duty. The deceased asked him as to what work he had. The accused told her that he was feeling hungry and, hence, bread and curry be served to him. The deceased told him that he had not maintained good relations with them so that they can serve food to him and that he should go away. The accused asked for water. The deceased told him that he would not get water also. PW-6 Laxmibai gave him water. The accused asked the deceased to wake up PW-4 Minakshi. He stated that he wanted to divorce her. The deceased asked him to go away. The accused had an axe with him, which he had hidden at his back. To her, it appeared like a stick when he took it out from the back. The accused beat the deceased with it. The deceased raised cries. PW-6 Laxmibai also started shouting "Meena, Meena". PW-7 Gajanan came running. PW-10 Mangal and PW-4 Meenakshi also came there. The accused gave three blows to the deceased. The accused was caught by PW-7 Gajanan, Popat and PW-8 Laxman. The turmeric boiling process was going on in Baburao's field and, there was light and, in that light, she saw the accused.

10. In her cross-examination, this witness has not deviated from the main story of the prosecution. Her evidence is attacked on the ground that in her police

statement, she has stated that the accused hit the deceased with a stick. She has not stated that the accused beat the deceased with an axe. However, in her examination-in-chief, she has explained this by stating that the axe appeared to her like a stick. PW-6 Laxmibai is an aged woman and a rustic witness. Her not noticing the axe does not discredit her evidence. Moreover, since there was no light inside the house of the deceased and the incident could be seen only in the light of turmeric boiling process, which was going on in the field of Baburao, it is possible that PW-6 Laxmibai, at that stage, could not make out whether it was an axe or a stick. Being the neighbour, she is the most natural witness. She has no personal enmity with the accused and, therefore, there is no reason as to why she would involve the accused falsely. There are some minor omissions in her evidence. The said omissions are proved by PW-13 SDPO Raskar. In her police statement, she had not stated the names of the persons, who had caught the deceased. She has also not stated that she saw the accused in the light of boiling of turmeric, which was going on in the field of Baburao. She has also not stated that after she shouted, PW-4 Minakshi and PW-10 Mangal came there. In her cross-examination, she has stated that she has not stated before the police that she had given water to the accused. These omissions have no adverse impact on her evidence because they are not major omissions. The evidence of this witness is amply corroborated by the other evidence on record.

11. PW-4 Minakshi, the wife of the accused has stated that the accused was addicted to liquor and used to quarrel with her and assault her. Her relations with the accused were good during the period when he was in service. Thereafter, on account of his excessive drinking, the relations were spoiled. She has further stated that the accused had left her mother's house and started residing at Vasgade one month prior to the incident because her mother had asked him to leave the house as he was quarrelling with the villagers. On the day of the incident, she, PW-10 Mangal, the deceased and PW-6 Laxmibai were sitting in the courtyard and chitchatting. Draupada was also there. She and PW-10 Mangal came inside the house and the deceased and PW-6 Laxmibai continued sitting in the courtyard. They heard the cry "Oh Mother". She rushed towards the door but the door was chained from outside. She then came out of the house from western side door and went towards south and then came to the eastern side courtyard. PW-10 Mangal was also with her. It was about 10.00 to 10.30 p.m. She saw one person beating the deceased with an axe. She saw this in the light of turmeric boiling process, which was going on in the field of Baburao. Thereafter, the accused turned and passed from a distance of two feet. She then identified him to be her husband. She then raised cries for help. PW-7 Gajanan and Popat came running. They caught the accused while he was running. The accused was taken to the Village Panchayat

Office. An axe, which was lying by the side of the deceased was taken charge of. Slippers found below the body of the deceased were also taken charge of. She has stated that the deceased had received injuries on her left hand and neck. Nothing has been brought out in her cross-examination to make her an unreliable witness. Omissions in her evidence are minor omissions. She has not stated in her statement that PW-6 Laxmibai was proceeding towards her house when she was in the courtyard after she heard the noise; that the accused was wearing vijar and shirt and the slippers were found below the body of the deceased and those were of the accused. These omissions cannot affect the credibility of this witness.

12. PW-10 Mangal, the daughter of the deceased has stated that she, PW-4 Minakshi, the deceased and PW-6 Laxmibai were sitting in the courtyard on 6/5/1988. They were chitchatting. She and PW-4 Minakshi entered the house and they were sleeping. Draupada was also inside the house. PW-6 Laxmibai and the deceased were outside the house. She heard the cry "Oh Mother" at about 10.30 p.m. That was the voice of the deceased. Her sister PW-4 Minakshi tried to open the eastern door, but it was chained from outside. She also stood up. She turned to south and then went to the east. Then they went to the courtyard. She saw one person assaulting the deceased with an axe. As soon as they reached the spot, he stopped beating and went outside. She then identified

him as the accused. She and PW-4 Minakshi went near the deceased, who had sustained bleeding injuries. PW-7 Gajanan, PW-8 Laxman and Popat brought the accused. The axe stained with blood and a pair of slippers of the accused were on the spot. The accused was taken away from the spot after he was brought there. In her cross-examination also, this witness is consistent about the incident of assault. The omissions in her statement are proved by PW-13 SDPO Raskar. She has not stated in her police statement that she had identified the accused while he was passing by her side. She has also not stated that he was wearing shirt and vijar and that she had seen the accused assaulting the deceased with an axe and at that time PW-6 Laxmibai was proceeding to her house. So far as her statement that she had seen the accused assaulting the deceased by axe is concerned, there is no omission. The omission is that she saw the incident at the time when PW-6 Laxmibai was proceeding to her house. The omissions are minor omissions. We find no reason to disbelieve this witness. The evidence of this witness is further supported by PW-7 Gajanan and PW-8 Laxman.

13. PW-7 Gajanan has stated that on the day and time of incident, he and Popat were in the house. They had taken meals and were sitting in the courtyard. He heard the cries and, hence, he went ahead. He saw a person running. He called Popat. His nephew PW-8 Laxman also came there. He, Popat and Laxman followed the said

person. Popat caught hold of him. They identified the said person as the accused. Then they took him to the Village Panchayat Office.

14. PW-8 Laxman has stated that on 6/5/1988, in the night he was in the house. He heard the cries from the vasti. He went outside his house and stood on the bund. He heard PW-7 Gajanan saying "Run Popat, Run Popat". He followed him by running. They caught hold of a person. He stated that the said person was the accused before the court. Then they took him in front of the house of the deceased and then to Village Panchayat.

15. PW-11 Annasaheb Gaikwad has stated that on the night of the incident, he was sitting on the Grampanchayat Office Katta. PW-7 Gajanan, PW-8 Laxman and Popat came to the Village Panchayat Office. He and others asked them to take the accused inside the office. He then went to the Sarpanch and woke him up and took him to the Village Panchayat Office. Then the Sarpanch went to Chandu Chougule and along with Chougule, he went to the police station.

16. PW-3 Balasaheb Patil is the Sarpanch of Village Panchayat Khanderajuri. He has stated that on 6/5/1983, in the night, he was in his house. At about 10.00 to 10.30 p.m., Annasaheb Gaikwad came to him and woke him up. He was told by Annasaheb that the accused had murdered the deceased and the accused was caught by

people and that many persons had gathered in the Village Panchayat Office and, hence, he should accompany them. He, then went to the Village Panchayat Office. The accused was in the office. Thereafter, along with Chougule, he went to the Miraj Rural Police Station to lodge information about the incident. They reached Miraj Rural Police Station at about 12 midnight. He informed about the incident to the police and the FIR came to be recorded, which is at Ex-23.

17. PW-7 Gajanan, PW-8 Laxman, PW-11 Annasaheb and PW-3 Balasaheb Patil appear to us to be truthful witnesses. Nothing has been brought on record to suggest that there was enmity between them and the accused so that they would falsely implicate the accused. The defence has not been able to make any dent in their evidence in the cross-examination. We, therefore, find no hesitation in relying on these witnesses. They provide the necessary corroboration to the evidence of PW-6 Laxmibai, PW-4 Minakshi and PW-10 Mangal.

18. It is also significant to note that the accused was immediately caught by the people and taken to the Village Panchayat Office. At about 2.00 p.m. on 7/5/1988 he was put under arrest and the arrest panchanama (Ex-21) was drawn. PW-2 Shivaji has proved the said arrest panchanama (Ex-21). PW-1 Shankar is the pancha to the scene of offence panchanama (Ex-16). Under the said panchanama, axe (article 4) and one pair of slippers

(article 5) were seized. The blade of the axe was stained with blood and the pair of slippers were also having blood stains. PW-1 Shankar is also a pancha to Ex-19 under which clothes of the accused were seized. It is pertinent to note that the said clothes were having blood stains. In our opinion, the immediate arrest of the accused and finding of blood stains on his clothes are clinching circumstances, which connect the accused to the murder of the deceased.

19. It was argued by Ms. Dandekar that if the deceased was lying on a carpet or chaddar, there ought to have been blood stains on them. The fact that no blood stains were found on the carpet or chaddar indicates that the prosecution story is false. We are unable to accept this submission. It is not the case of the prosecution that the deceased was attacked when she was sleeping on the carpet or chaddar. Scene of offence panchanama indicates that blood stains were found at the scene of offence. Blood stained axe and blood stained slippers were also found at the scene of offence and, therefore, the incident did take place in the courtyard. It was urged that the turmeric boiling process was not going on adjacent to the courtyard and, therefore, it is doubtful whether there was visibility. The prosecution witnesses, therefore, must not have seen the accused. We are unable to accept this submission also. Assuming this to be so, the accused is the husband of PW-4 Minakshi and brother-in-law of PW-10 Mangal. Being neighbour of the

deceased, PW-6 Laxmibai also knew the accused. He is no stranger to the witnesses. PW-6 Laxmibai had seen the incident from close quarters. PW-4 Minakshi, PW-10 Mangal had also seen him passing by their side. Therefore, there can never be mistaken identity. Besides, immediately after the incident, he was caught by PW-8 Laxman and PW-7 Gajanan. Blood stained clothes were seized from his person. There can, therefore, be no doubt that the accused was responsible for the murder of the deceased.

20. In view of the above, in our opinion, the prosecution has proved its case beyond reasonable doubt. The defence of the accused appears to us to be palpably false. In the circumstances, the impugned judgment and order of conviction and sentence will have to be confirmed and the appeal will have to be dismissed. Accused Manohar Vithal Benapure is on bail. His bail bond stands cancelled. Ms. Dandekar states that three months time be given to the accused to surrender. In the circumstances of the case, accused Manohar Vithal Benapure is given two months' time to surrender.

21. Appeal is dismissed with above direction.

(SMT. RANJANA DESAI, J.)

(ABHAY S. OKA, J.)